

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DAVID FLOYD, et. al.,

Plaintiffs,

-against-

THE CITY OF NEW YORK, et. al.,

Defendants.

08 CV 1034 (AT)

USDC SBNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 5/6/2019

**STIPULATION OF
SETTLEMENT AND ORDER
FOR COUNSEL FEES, COSTS,
AND EXPENSES TO CLASS
COUNSEL FOR TIME AND
EXPENSES INCURRED IN THIS
MATTER FROM FEBRUARY 24,
2017 THROUGH MAY 31, 2018**

X

WHEREAS, on January 31, 2008, Plaintiffs in the above-captioned action filed a Complaint pursuant to 42 U.S.C. § 1983; the Fourth and Fourteenth Amendments to the United States Constitution; the Constitution and laws of the State of New York; and

WHEREAS, on August 12, 2013 the Court imposed a final order of permanent injunction and ordered several forms of permanent relief; and

WHEREAS, on October 31, 2014 the United States Court of Appeals for the Second Circuit affirmed the District Court's Opinion of July 30, 2014 denying the police unions motion to intervene, granted the City of New York's motion to withdraw the appeal of this matter with prejudice, and remanded this case back to the District Court for further proceedings as may be appropriate in the circumstances; and

WHEREAS, the Parties sought to resolve the issue of counsel fees, costs and expenses, without further litigation, on terms just and fair to all Parties and entered into the Stipulation of Settlement of Counsel Fees, Costs and Expenses and Order, which was extensively and vigorously negotiated in good faith, over a period of several months, and so ordered by the Court on January 24, 2017 ("Main Fee Stipulation"); and

WHEREAS, the Defendants and the Plaintiffs agree that, having obtained the above-described relief, pursuant to Section D of the Main Fee Stipulation, Plaintiffs are entitled to an

award of reasonable attorneys' fees, costs and expenses to Class Counsel for time and expenses incurred in this matter, from February 24, 2017 through May 31, 2018, and

WHEREAS, the negotiations have resulted in this fee stipulation ("Second Interim Fee Stipulation"), which is subject to Court Approval, settles the counsel fees, costs and expenses in this action, in the manner and upon the terms set forth below, for time and expenses incurred in this matter, from February 24, 2017 through May 31, 2018,

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned, as follows:

A. DEFINITIONS

1. "Main Fee Stipulation" shall mean the Stipulation of Settlement of Counsel Fees, Costs and Expenses and Order, executed by the Parties in the above-captioned action, which was so ordered by the Court on January 24, 2017.
2. "Second Interim Fee Stipulation" shall mean this Stipulation of Settlement and Order for Counsel Fees, Costs and Expenses to Class Counsel for Time and Expenses Incurred in This Matter from February 24, 2017 through May 31, 2018, executed by the Parties in the above-captioned action in accordance with Section D of the Main Fee Stipulation.
3. "Effective Date" shall mean (30) thirty days following the "Final Approval Date" defined below, and shall also be the date upon which this Second Interim Fee Stipulation enters into effect.
4. "Final Approval Date" shall mean the date on which this Court endorses this Second Interim Fee Stipulation and following any court proceedings and/or rulings, if applicable, in connection with the approval of this Fee Stipulation.
5. "Plaintiffs" shall mean the Class Representatives and Class Members.
6. "Parties" shall mean Plaintiffs and Defendants.

7. "Class Representatives" shall mean the Named Plaintiffs in the above captioned action.
8. "Settlement Class" shall mean the class of Plaintiffs agreed upon by the Parties.
9. "Class Members" shall mean all members of the Settlement Class.
10. "Class Counsel" shall mean Plaintiffs' attorneys of record in the above-captioned action between February 24, 2017 and May 31, 2018, including Beldock Levine & Hoffman LLP, Center for Constitutional Rights, Covington & Burling LLP, and The Bronx Defenders.
11. "Defendants" shall mean the City of New York, the New York City Police Department, and their predecessors, successors, or assignees together with past, present and future officials, employees, representatives, and agents.
12. "City" shall mean the City of New York.

B. INTRODUCTION

1. The Parties enter into this Second Interim Fee Stipulation after arm's length good faith negotiations for the purpose of avoiding the burdens of further litigation over the payment of counsel fees, costs and expenses to Class Counsel for time and expenses incurred in this action, from February 24, 2017 through May 31, 2018.

2. This Court has jurisdiction over this action under 28 U.S.C. §§ 1331 and 1343. Venue is proper in the United States District Court for the Southern District of New York pursuant to 28 U.S.C. § 1391.

C. COUNSEL FEES, COSTS AND EXPENSES **FROM FEBRUARY 24, 2017 THROUGH MAY 31, 2018**

1. The City agrees to pay attorneys' fees, totaling one-million, one-hundred eighty, five-hundred ninety-nine dollars and twenty-six cents (\$1,180,599.26), and costs and expenses, totaling five-thousand five-hundred ninety-five dollars and twenty-eight cents (\$5,595.28), to Class Counsel for time and expenses incurred in this matter, from February 24, 2017 through

May 31, 2018. Class Counsel represent that they are authorized to receive payment on behalf of the Plaintiffs in full satisfaction of all claims for attorneys' fees, costs, and expenses in, arising from, or in connection with this action, from February 24, 2017 through May 31, 2018. Plaintiffs hereby agree that payment shall be made by check as follows: \$600,916.89 to Beldock Levine & Hoffman LLP, \$150,229.22 to Jonathan C. Moore, Esq, \$357,783.43 to the Center for Constitutional Rights, and \$77,265.00 to The Bronx Defenders, and accept said payment in full satisfaction of all claims for attorneys' fees, costs, and expenses, in, arising from, or in connection with this action, during that time period.

2. Class Counsel represent that Covington & Burling LLP has not sought any attorneys' fees, costs or expenses in, arising from, or in connection with this action, from February 24, 2017 through May 31, 2018.

3. These four (4) payments shall be made within (60) sixty days from the Effective Date of this Stipulation and Order. No interest shall accrue if payment is issued within 60 days from the Effective Date of this Stipulation and Order. Any payment received beyond the 60 day period shall accrue interest as provided by the Federal Rules of Civil Procedure.

4. This Second Interim Fee Stipulation may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

D. RELEASE

1. This Second Interim Fee Stipulation resolves all claims for attorneys' fees, costs, and expenses to Class Counsel incurred for time and expenses in this matter from February 24, 2017 through May 31, 2018, in accordance with the provisions of the Main Fee Stipulation, as set forth in Section D therein.

2. Plaintiffs hereby agree and represent that no other claims for attorneys' fees, expenses, or costs arising out of this action, for time and expenses incurred by Class Counsel in

this matter, from February 24, 2017 through May 31, 2018, shall be made by or on behalf of Class Counsel in any application for attorneys' fees, expenses, or costs at any time.

3. This Second Interim Fee Stipulation shall not be admissible in, nor is it related to, any other litigation or settlement negotiations outside of the above-captioned action, except to enforce the terms of this agreement.

4. This Second Interim Fee Stipulation contains all the terms and conditions agreed upon by counsel for the Defendants and the Plaintiffs hereto, and no oral agreement entered into at any time nor any written agreement entered into prior to the execution of this Second Interim Fee Stipulation regarding the subject matter of attorneys' fees, expenses, or costs to Class Counsel for time and expenses incurred in this matter, from February 24, 2017 through May 31, 2018, shall be deemed to exist, or to bind the Parties hereto, or to vary the terms and conditions contained herein, except that this Second Interim Fee Stipulation shall be interpreted in a manner consistent with the previously-executed Main Fee Stipulation.

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E. NULLIFICATION

1. In the event the Court does not approve this Second Interim Fee Stipulation, the Parties shall meet and confer in good faith to determine whether to agree upon a modified Second Interim Fee Stipulation. If they are unable to do so, this Second Interim Fee Stipulation shall become null and void.



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THE BRONX DEFENDERS
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COVINGTON & BURLING LLP
By: Philip I. Irwin
620 Eighth Avenue
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Tel. (212) 841-1000
Attorney for Plaintiffs

Dated: New York, New York
April ____ , 2019

SO ORDERED:

HONORABLE ANALISA TORRES
United States District Judge

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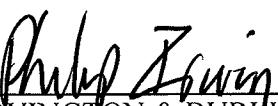
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Dated: New York, New York
May 6 , 2019

SO ORDERED.


HONORABLE ANALISA TORRES
United States District Judge